IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 7TH AUGUST 2007 / 16TH SRAVANA 1929

WP(C).No. 22723 of 2007(E)

CRMP.2879/2007 of CHIEF JUDL.MAGISTRATE, ERNAKULAM

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PETITIONER:

A.R. ANIL KUMAR,
ANTHIKKAD HOUSE, FACT QUARTERS,
ED FLAT NO.44, ELOOR.

BY ADV. SRI.P.F.FRANCIS

RESPONDENTS:

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1. THE STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY TO STATE
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE SUB INSPECTOR OF POLICE,
KOCHI CITY, TRAFFIC (WEST) POLICE STATION,
KOCHI CITY, ERNAKULAM.

BY GOVERNMENT PLEADER SRI.M.S.BREEZ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON ON 07/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC NO.22723/2007

PETITIONER'S EXHIBITS:

EXT.P1:- TRUE COPY OF THE JUDGMENT IN WPC NO.18404/2007 DT.18/6/2006 OF THIS HON'BLE COURT.

EXT.P2:- TRUE COPY OF THE ORDER IN CRL.M.P.NO.2879/07 DATED 27/6/2007 OF THE CHIEF JUDICIAL MAGISTRATE, ERNAKULAM.

[TRUE COPY]

R. BASANT, J.

W.P.(c) NO.22723 OF 2007-E

Dated this the 26th day of July, 2007

ORDER

The petitioner's plight deserves sympathy. There was a traffic accident involving two vehicles. The petitioner is the owner of one of the vehicles. A crime was registered by the police against the petitioner at the instance of the driver of the other vehicle. Investigation is in progress. That is Crime No.1499/07 before the City Traffic Police, Kochi (West).

2. In the meantime, the petitioner filed a complaint before the learned Additional Chief Judicial Magistrate, Ernakulam. The learned Magistrate forwarded the said complaint to the City Traffic Police (West) for investigation under Sec.156(3) of the Cr.P.C. Investigation into that crime is also pending. The petitioner's vehicle has been seized and the same was available in the custody of the police. The learned Public Prosecutor submits that the vehicle had been

produced before the learned Magistrate and is at present in the custody of the police on the basis of a direction issued by the learned Additional C.J.M., Ernakulam.

3. The petitioner came to this Court with W.P.(c) No.18404/07 praying that the vehicle may be directed to be returned to him. This Court, by order dated 18/6/07, directed the petitioner to approach the learned Magistrate with an appropriate application under Sec.451 or Sec.457 of the Cr.P.C. The learned Magistrate was directed to pass orders expeditiously.

4. Thereupon, the petitioner went and filed Crl.M.P.No.2879/07 before the learned Chief Judicial Magistrate, Ernakulam. Before the learned Magistrate the Sub Inspector of Police, Kochi City Traffic (West) Police Station was arrayed as respondent. The learned C.J.M., by the impugned order, a copy of which is produced as Ext.P2, surprisingly it appears to me, dismissed the application stating that the vehicle had not been produced before the learned C.J.M.; nor was any report or seizure of the property filed before him. I said `surprisingly' because the learned C.J.M. could easily have ascertained from the respondent as to the court before which the vehicle was produced. It appears that the same was not done. The

respondent also curiously, it appears, did not apprise the learned C.J.M. that the seizure was reported and the vehicle was produced not before the learned C.J.M. but before the learned Additional C.J.M. Be that as it may, the learned C.J.M. dismissed the application.

5. The petitioner, without caring to ascertain before which court the vehicle is produced, has come to this Court. He prays for a direction for release of the vehicle. It is certainly for the petitioner to approach the court before which the vehicle is produced or seizure reported and apply for release of the vehicle under Sec.451/457 of the Cr.P.C. The petitioner has not complied with the direction in Ext.P1 order dated 18/6/07 in making an application before the learned C.J.M. who had nothing to do with the claim in question. The petitioner must have approached the learned Additional C.J.M.

6. The learned Public Prosecutor, after taking specific instructions, reports before this Court that the seizure was reported and the vehicle was produced before the learned Additional C.J.M., Ernakulam.

7. I am, in these circumstances, satisfied that there can be a direction to the petitioner to approach the learned Additional C.J.M., Ernakulam for release of the vehicle belonging to him.

The learned Additional C.J.M. shall, within three days of the filing of such petition, pass appropriate orders thereon in accordance with law and report compliance to this Court.

8. Await compliance/report. Call on 6/8/2007.

9. Hand over a copy of this order to the learned counsel for the petitioner.

(R. BASANT, JUDGE)

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